"It appears to me that if it is established that a man suffers a strain of the heart which causes death as a result of the work engaged in, nobody can say that he has not sustained a physiological injury, and, therefore, has met with an accidental injury."

His Lordship continued:

"I find myself quite unable to distinguish this case from *M'Ardle* v. *Swansea Harbour Trust* (1915) 85 L.J.K.B. 733. It appears to me to be exactly the same in every detail. The only difference is that the loss or hurt here took some twenty or thirty minutes to develop, whereas in *M'Ardle's Case* the loss or hurt happened at once, according to the nature of the accident, because it was the bursting of an aneurism, and therefore death was caused immediately."

In *James Patrick & Co. Proprietary Ltd.* v. *Sharpe*[2] the respondent's husband, while travelling between his place of residence and his place of employment, suffered an auricular fibrillation as a direct result of which he died. For some years prior to his death he suffered from atherosclerosis and degenerative and progressive heart disease, but his pathological condition was not known to, or suspected by him. The onset of the auricular fibrillation was a sudden physiological change which was unexpected and not designed by him. It was held that it was not necessary to prove that some external event, or some action of the deceased, had caused the sudden physiological change to happen when it did, and, therefore, personal injury by accident was caused to the deceased within the meaning of section 5(1) reading into that sub-section the definitions of "disease" and "injury" contained in section 3(1); accordingly the appellant was liable to pay compensation.

The facts in that case are quite similar to the facts in our case, the only difference being that while the workman in that case had died while he was actually travelling in the bus, the workman in our case had died soon after he had completed his bus journey. Section 5(1)(b)(i) of the Workers' Compensation Act, 1928 (Victoria) (No. 3806 of 1928) as amended by Workers' Compensation Act, 1946 (Victoria) (No. 5128 of 1946) is almost identical with section 4(1)(b) of our Ordinance which provides that an accident happening to a workman while travelling to his place of employment shall be deemed to arise out of and in the course of his employment. If such accident could be so deemed it would in my view also follow that an accident happening soon after a workman had completed his journey could also be so deemed. This would be particularly so when the workman in our case had taken his time card and had therefore, as found by the learned arbitrator, "commenced his work for his afternoon shift."

I therefore hold that the learned arbitrator had rightly decided that deceased's death was due to an accident which arose out of and in the course of his employment and as the amount of compensation which was awarded has not been challenged I would dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *Skrine & Co.; Wilson & Co.*

CHI LIUNG & SON SDN. BHD. v. CHONG FAH & SONS SDN. BHD. & ANOR.

[O.C.J. (Ajaib Singh J.) July 26, 1974]
[Kuala Lumpur — Civil Suit Nos. 1302 & 1304 of 1973]

Land Law — Caveat — Application to extend private caveat — Whether application can be made by summons in chambers in a pending suit — Burden of proof — Whether applicant has a caveatable interest — National Land Code, ss. 323(1)(a) and 326(2).

In this case the plaintiff had applied to the Registrar of Titles for private caveats to be entered against certain lands and the Registrar of Titles had entered the private caveats. The plaintiff subsequently commenced proceedings against the defendants for declarations that the memoranda of transfer of the lands executed by the second defendant in favour of the first defendant and registered in the Registry of Titles were fraudulent, null and void. This action was still pending. The first defendant applied to the Registrar of Titles for the removal of the caveat and notices of intended removal was served by the Registrar of Titles on the plaintiff. The plaintiff thereupon applied by summons in chambers for extension of the private caveats.

Held: (1) where there is an action pending before the court an application to extend an existing caveat may quite properly be made by way of summons in chambers in the pending action where the lands in question are the very subject matter of the pending action and where the claims in the action include claims of such a nature as would involve a consideration of the preservation or security of the lands until the rights of the parties concerned are finally determined by the court;

(2) the plaintiff in this case had shown good grounds for its claim to the lands in question and therefore had a caveatable interest under section 323(1)(a) of the National Land Code as a person or body claiming title to alienated land;

(3) the caveats in this case should be extended until the civil suits were heard and determined by the court.

Cases referred to:-

(1) *In re Meister Lucius & Bruning Ltd.* [1914] W.N. 390.

(2) *Nanyang Development (1966) Sdn. Bhd.* v. *How Swee Poh* [1969] 1 M.L.J. 232; [1970] 1 M.L.J. 145, F.C.

(3) *Yap Hong Thin & Anor.* v. *Seenevasam* [1970] 1 M.L.J. 143.

(4) *Heywood & Anor.* v. *B.D.C. Properties Ltd.* [1963] 2 All E.R. 1063.

CIVIL SUITS.

R. C. Hoffman for the plaintiff.

R. R. Sethu for the respondents.

Ajaib Singh J.: The plaintiff made two separate applications, which I heard together, in the above civil suits, for extensions of private caveats which the plaintiff had entered against certain lands the subject matter of the civil suits between the plaintiff and the defendants. The applications were made by way of summons-in-chambers and were supported by affidavits affirmed by one Tong Lee Hwa a director of the plaintiff company. The facts leading to these applications were that on 2nd November, 1973, the plaintiff applied to the Registrar of Titles, Selangor, for the entry of private caveats against certain lands under section 323 of the National Land Code. The grounds of claim as set out in the applications were similar, except for certain dates, as follows: —

"(a) That the said Chi Liung & Son Sendirian Berhad is the registered proprietor of all the said lands described in the schedule hereto.

(b) That on the 1st day of November 1973 we caused to have a search made at the Registry of Titles, Kuala

Lumpur in respect of the said lands of the said Chi Liung & Son Sendirian Berhad and discovered that the said lands of which the said Chi Liung & Son Sendirian Berhad is the registered proprietor had purportedly been transferred to another company known as Chong Fah & Sons Sdn. Berhad and registered on the 31st day of October 1973. (11th October, 1973 in the case of civil suit 1304 of 1973).

(c) That we have reason to believe that the purported transfer of the said lands by the transfer of the 2nd day of April 1966 (1st June, 1966 in the case of civil suit 1304 of 1973) is a fraudulent transfer intended to deprive the said Chi Liung & Son Sendirian Berhad of its proprietorship of and title to the said lands and

(d) That we have sufficient evidence and witnesses to institute legal proceedings and wherefore we humbly request your good-office to lodge the caveat against the said lands to prevent the purported purchaser from dealing with the said lands and/or selling it to any other party and/or persons pending the outcome of the civil suit to be instituted."

The applications were verified, as required by section 323(3) of the National Land Code, by statutory declarations by Tong Lee Hwa, which, again, were similar in both cases, except for certain dates and the description of certain lands, as follows: —

"I, TONG LEE HWA (NRIC No. 3993571) do solemnly and sincerely declare that I am the Managing Director of Chi Liung & Son Sendirian Berhad formerly known as Chi Liung & Son Limited and am duly authorised to make this Statutory Declaration.

2. On the 1st day of November 1973 I had cause to have a search made in the Registry of Titles, Kuala Lumpur in respect of the properties of the said Chi Liung & Son Sendirian Berhad (hereinafter called 'the Company').

3. As a result of the search, I discovered that certain properties (situated in Klang in the case of civil suit 1304 of 1973) of which the company is the registered proprietor had purportedly been transferred to a company known as Chong Fah & Sons Sdn. Berhad. Particulars of the properties are as set out in the schedule to the Application for Entry of a Private Caveat (hereinafter called 'the said lands').

4. The transfer purports to have been executed on the 2nd day of April 1966 (1st June, 1966 in the case of civil suit 1304 of 1973) by Chi Liung & Son Limited as transferer and by Chong Fah & Sons Sdn. Berhad as transferee. However, the transfer was presented for registration only on the 31st day of October 1973 (11th October, 1973 in the case of civil suit 1304 of 1973).

5. I have personally examined the minutes of the company during the material period of the purported sale and transfer of the said lands and I have been unable to find any resolution either of the company or of the directors authorising the purported sale of the said lands to Chong Fah & Sons Sdn. Berhad or to any other persons or company.

6. I have also examined the accounts of the company for the period in question and I have not been able to trace any payment to the company for the purported sale.

7. I have been a director of the company since 1962 and during the period of my directorship I was personally aware that the said lands have not been sold or been the subject matter of any agreement for sale.

8. I have been aware for sometime that the issue documents of title to the said lands have been missing from the records of the company and I have made every effort to discover their whereabouts. And indeed at the company's Board of Directors meeting on 28th February 1967 the said Tong Chong Fah was requested to deliver to the company all title deeds and other documents whatsoever pertaining to the said Chi Liung & Son Sendirian Berhad to which he agreed to deliver but regrettably did not comply with.

9. I have caused notice to be given in the Government Gazette in the months of January, June and July 1973 vide Gazette Notification Nos. 37, 255, 288 and 345 respectively that the said issue documents of title have been lost with a view to obtaining official duplicate copies of the issue documents of title in replacement of the missing documents. And I verily believe that the duplicate issue documents of titles are now ready and available for delivery.

10. I have reason to believe that the original issue documents of title were wrongfully retained by Tong Chong Fah and that the purported transfer of the said lands by the transfer of the 2nd day of April 1966 (1st June, 1966 in the case of civil suit 1304 of 1973) is a fraudulent transfer intended to deprive the company of its proprietorship of and title to the said lands."

Thereafter, the Registrar of Titles entered two private caveats in accordance with the applications by the plaintiff and in due course served notices thereof on the first defendant. On 18th December, 1973, the plaintiff commenced two actions against the defendants by generally indorsed writs of summons, entered as civil suits 1302 and 1304 of 1973, claiming, *inter alia*, for declarations that the memoranda of transfer in respect of the said lands dated 2nd April, 1966 and 1st June, 1966, executed by the second defendant in favour of the first defendant and registered in the Registry of Titles, Selangor, on 31st October, 1973 and 11th October, 1973, were fraudulent, null and void and of no effect, and for orders directing the Registrar to cancel the memoranda of transfer and to replace the name of the plaintiff as the proprietor of the said lands. The plaintiff also claimed for injunctions to restrain the defendants or their agents from dealing with the lands by way of transfer or in any manner whatsoever.

Subsequently, upon the application by the first defendant to remove the caveats the Registrar of Titles served notices of intended removal of the caveats on the plaintiff on 20th May, 1974, intimating to the plaintiff that the caveats would be removed at the expiry of one month from the date of service of the notices or at the end of such further period as the court may order. Hence, these applications by the plaintiff under section 326(2) of the National Land Code for extensions of the caveats to the date of the disposal of the civil suits.

The defendants opposed the applications and the second defendant filed affidavits in reply in his capacity as the governing director of the first defendant company. Mr. R. R. Sethu, learned counsel for the defendants, raised a preliminary objection to these applications for extensions of the caveats by the plaintiff. He submitted that the applications should have been made by way of originating motion or originating summons and not by way of summons-in-chambers and in support of his submission he referred to the cases of *In re Meister Lucius & Bruning, Ltd.*,[1] *Nanyang Development (1966) Sdn. Bhd.* v. *How Swee Poh*[2] and *Yap Hong Thin & anor.* v. *Seenevasam.*[3]

On the merits of the applications Mr. Sethu submitted that the plaintiff had forfeited its right to enter caveats because there had been a delay in instituting proceedings against the defendants. He referred to paragraphs 8 and 9 of the statutory declarations by Tong Lee Hwa and said that the plaintiff should have commenced proceedings much earlier when it was discovered that the title deeds in respect of the lands in question were missing. The onus of proof, he said, was on the applicant and the plaintiff had failed to show a strong *prima facie* case. The delay had not been

explained and an extension of a caveat not being a matter as of right should not be allowed. Mr. Sethu submitted further that even if the plaintiff's applications were allowed the court had, under section 326(2) of the National Land Code, jurisdiction to extend the caveats only for a further month after their expiry as intimated by the Registrar of Titles in his notices of intended removal of the caveats.

Mr. R. C. Hoffman, learned counsel for the plaintiff, submitted that the applications, being in a cause or matter pending before the court, the procedure by way of summons-in-chambers was quite in order and he cited the case of *Heywood and anor.* v. *B.D.C. Properties, Ltd.*[4] in support. He submitted that the court was not being asked to make any final order but only to extend the caveats so as to safeguard the property until trial. As to the allegation of delay he submitted that the applications for caveats were made the moment it was discovered that there was a purported transfer of the lands. There was, he said, evidence of forgery against the defendants in the suits and harm would be done to the plaintiff if the caveats were not extended.

After giving this matter some thought I came to the conclusion that there was nothing wrong in making the applications for extensions of the caveats by way of summons-in-chambers in the two actions. No authority was cited directly on the point in issue in the preliminary objection taken by the defendants. The National Land Code itself did not prescribe any mode of procedure to be adopted by any person seeking an order to extend a private caveat but there can be no doubt that such an application may be made either by originating motion, on the authority of *In re Meister Lucius and Bruning, Ltd.*[1] and *Nanyang Development (1966) Sendirian Berhad* v. *How Swee Poh*[2] or, by analogy, by originating summons. In the second of the two cases just cited Raja Azlan Shah J. (as he then was) held, in effect, following the case of *In re Meister*, that where an act of parliament merely provided for an application and did not specify in what form that application may be made to the court the application may as a matter of procedure be made in any form in which the court could be moved. In the present applications before me the plaintiff had applied not by originating motion or by originating summons but by summons-in-chambers in the civil suits so that the question in issue for my determination was whether the mode of procedure adopted by the plaintiff was in order or whether the applications for extensions of the caveats ought to have been made by separate originating motions or originating summonses. In my opinion, where there is an action pending before the court an application to extend an existing caveat may quite properly be made by way of summons in the pending action where the lands in question are the very subject matter of the pending action and where the claims in the action include claims of such a nature as would involve a consideration of the preservation or security of the lands until the rights of the parties concerned are finally determined by the court. The plaintiff in the two civil suits had, *inter alia*, claimed for an injunction to restrain the defendants whether by themselves or their agents from dealing with the lands in question by way of transfer, charge or the creation of a lien thereon or in any manner whatsoever. Private caveats against the lands were entered by the plaintiff on 2nd November, 1973 and civil actions in relation to those lands were commenced against the defendants some six weeks thereafter. Applications for the extensions of the caveats were, therefore, appropriate consequences pursued by the plaintiff and which were intrinsically connected with the claims for injunctions in the civil suits against the defendants. In the circumstances, I overruled the preliminary objection raised by Mr. Sethu on the question of procedure.

On the main issue of the merits of the applications the onus clearly was on the plaintiff to satisfy the court that it had good grounds to have the caveats extended for a further period of time after it had been served with notices of intended removal of the caveats by the Registrar of Titles. The first defendant was, after all, the registered proprietor of the lands and it was up to the plaintiff to satisfy the court that it had good grounds for its claims to those lands. In the case of *Nanyang Development (1966) Sdn. Bhd.* v. *How Swee Poh*[2] Azmi L.P. had this to say —

> "In my view (the caveator) has not only to state his grounds but to substantiate them before the learned judge. I do not think it is the intention of the law that when a person enters a private caveat against a land he would not be required to prove that he has a good reason in law for doing that and that it should be on the part of the proprietor to satisfy the court that the caveator has not got good grounds for entering the private caveat. In my view, therefore, the burden is on the (caveator) to satisfy the court that he has good grounds for his alleged claim that he had a registrable interest on the land, and all the (proprietor) has to show is that it is the registered proprietor."

The extent of the onus of proof required of a caveator is not stated in the passage quoted above but, with respect, I am of the view that the onus does not extend any further than establishing a *prima facie* case. On the evidence before me I was satisfied that the plaintiff had shown good grounds for its claim to the lands in question and it, therefore, had a caveatable interest under section 323(1)(a) of the National Land Code as a person or body claiming title to alienated land. Mr. Sethu's allegation of delay on the part of the plaintiff was groundless. It was true that the plaintiff had been aware for quite some time that the title deeds in respect of the lands were missing from the plaintiff company's records. However, it was not until 1st November, 1973, that the plaintiff discovered that the lands had been transferred by the second defendant to the first defendant and, thereafter, the plaintiff promptly applied for the entry of the caveats on the very next day. I also disagreed with Mr. Sethu that the court had jurisdiction to extend the caveats for only one month under section 326(2) of the National Land Code. In my view there is no such restriction in section 326(2). I accordingly made orders in terms of the plaintiff's applications that the caveats be extended until the civil suits are heard and determined by the court and that the costs of and incidental to the applications be costs in the cause.

Order accordingly.

Solicitors: *Allen & Gledhill; Chin, Sethu & Co.*